IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10737 OF 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MANSUKHBHAI DHARAMSHIBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :
Shri Satyen B. Rawal for Petitioner(s).
Ms. Manisha Lavkumar, AGP for Respondent(s) : 1.
Ms. Lilu K. Bhaya for Respondent(s) : 2.
Shri H.D. Chudasama for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/07/2007

ORAL JUDGMENT

Though the learned Labour Court has directed reinstatement with full back-wages in favour of the petitioner, against the Panchayat,

but, the petitioner is before this Court under Article 226/227 of the Constitution of India with a prayer that the petitioner was wrongly directed to be reinstated in the services of the Panchayat, while, in fact, in view of the documents annexed with the Writ Application, evidence produced before the learned Labour Court and provisions of the Scheme (to which I will refer little later), the petitioner would be an employee of the Gujarat Electricity Board.

2. Shri Satyen Rawal, learned Counsel for the petitioner, submitted that from the orders of appointment and the mandates issued by the Gujarat Electricity Board, the appointment was made, training was imparted to the petitioner and only thereafter, the petitioner was absorbed in the services. According to him, if the corporate veil is lifted, it will clearly float on the surface of the record that the Gujarat Electricity Board, in fact, is the employer.

3. Ms. Lilu K. Bhaya, learned Counsel for the Gujarat Electricity Board, submitted that in absence of sufficient Electrical Helpers or '*Vijligars*', a scheme was floated, under which training was to be imparted by the Gujarat Electricity Board and thereafter, such trained persons were to be appointed by the concerned Panchayat after due approval of the Gujarat Electricity Board. She submitted that the scheme has been interpreted in Special Civil Application No.3520 of 1991 and the Division Bench of this Court has held that such Electrical Helpers or

'*Vijligars*' cannot be taken to be the employees of the Gujarat Electricity Board.

4. Shri Raval, learned Counsel for the petitioner, however, submitted that in the said Special Civil Application No.3520 of 1991, there was no request from the side of the said petitioner to lift the corporate veil and to look into the fact as to who was the real employer. He submitted that this Court should complete the exercise and must hold in favour of the petitioner.

5. It would be trite to say that if a scheme is interpreted by the Division Bench, then, a single Judge would not be entitled to take up the scheme again, lift the corporate veil or under the garb of lifting the corporate veil cannot enter into the exercise of finding that what was the real meaning of the scheme or what the contracting parties really intended. In the said matter, the Division Bench has observed that appointments were to be made by different Panchayats subject to the approval by the Gujarat Electricity Board. If the appointment was in conformity with the formalities mentioned in the Scheme, then, the Gujarat Electricity Board was to pay fixed amount to the Panchayat. Such Panchayat was required to make the payment of wages to the workman concerned. Even after holding so, the Division Bench has observed that by no stretch of reasoning, it can be said that the workmen were employed by the Gujarat Electricity Board.

If that is the final verdict of the Division Bench, then, it would not be possible for this Court to take another view.

6. Agreeing with the submissions of Ms. Lilu K. Bhaya, learned Counsel for the Gujarat Electricity Board, I dismiss the petition. Rule is discharged. Interim relief, if any, is vacated. No costs.

7. At this stage, Shri Raval, learned Counsel for the petitioner, submits that for last 11 (eleven) years, the award made by the learned Labour Court has not been complied with or implemented by the Panchayat. He submits that the petitioner had already made an application to the learned Labour Court for implementation of the award. However, the learned Labour Court is not passing any orders on the application.

8. If the application filed by the petitioner is pending consideration, then, the concerned Labour Court shall pass final orders on the said application within a period of three months from the date of appearance of the parties.

[R.S.Garg, J.]

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